

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 7, 2022	() Consent	(X) Regular
	() Workshop	() Public Hearing
Department: <u>Office of Resilience</u>		
Submitted By: <u>Office of Resilience</u>		
Submitted For: <u>Office of Resilience</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on July 12, 2022 at 9:30 A.M.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017-012), section 17-504 through section 17-507, regarding the Property Assessed Clean Energy Program; providing for a savings clause; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the code of laws and ordinances; providing for enforcement; providing for penalties; providing for captions; and providing for an effective date.

Summary: In recent years, Office of Resilience (OOR) staff has presented to the Board of County Commissioners (BCC) at several workshops and received BCC direction on the Palm Beach County Property Assessed Clean Energy (PACE) Program that operates in the County. On September 29, 2021, OOR and other stakeholders presented at a BCC workshop on potential ordinance and streamlining improvements to the Palm Beach PACE Program. The BCC directed staff to work with stakeholders and recommend amendments to the Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017012), section 17-504 through section 17-507, regarding the Property Assessed Clean Energy Program. The BCC recommended that staff work to increase the applicability of the Ordinance for non-residential financing, streamline the reporting process, increase consumer protections, and explore the possibility of capping interest rates. Staff has met with local PACE representatives numerous times to collaborate on these efforts. Additionally, staff has worked closely with the Tax Collector’s Office on these recommendations. Upon final direction, staff will advertise the proposed ordinance amendments for adoption at the July 12, 2022 BCC meeting. Countywide (RM)

Background and Justification: Section 163.08, Florida Statutes, authorizes local governments to create PACE programs that fund energy efficiency, renewable energy, and wind resistance improvements for residential and commercial properties. In 2017, the BCC established a PACE program in the County, which is applicable within unincorporated areas of the County and within all municipalities that have not adopted their own PACE ordinance or resolution. With PACE, property owners within a participating district can finance a qualified project through a voluntary non-ad valorem assessment on their annual property tax bill. Failure to pay the PACE assessment may result in the loss of property subject to the PACE assessment, similar to failing to pay one’s property taxes.

Attachments:

1. Recommended Ordinance Amendments
2. PACE Proposed Amendments Summary

Recommended by: <u>Men S Houston</u>	<u>5-10-22</u>
Department Director	Date
Approved by: <u>Pal</u>	<u>5/16/22</u>
Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in Current Budget? Yes No x

Does this item include the use of federal funds? Yes No x

Budget Account No.:

Fund Department Unit Object Program

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review: *S Neary*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

*for review
acknowledged
5/11/22*
Laura M. Baker 5/11/22
OFMB JA 5/11/22

Ann J. Jordan 5/13/22
Contract Development and Control
5-13-22 TW

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

Attach 1

Strike-through

ORDINANCE NO. 20____-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ; PROVIDING FOR A SAVINGS CLAUSE;; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and
2 Non-Residential Properties have been established across the country to provide mechanisms
3 for funding energy efficiency, renewable energy, and other types of improvements to
4 residential and commercial properties; and

5 **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and
7 are administered by the local government or by for-profit or not-for-profit entities; and

8 **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid
9 as an assessment on the property's regular tax bill; and

10 **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to
12 apply to local governments for financing certain energy efficiency, renewable energy, and
13 wind resistant improvements; and

14 **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with
15 energy-related qualifying improvements benefit from reduced energy consumption, reduced
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane
17 mitigation policies; and

18 **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section
20 197.3632, Florida Statutes; and

1 **WHEREAS**, the County has entered into interlocal agreements with multiple PACE
2 Agencies/Authorities/Districts to encourage competition and provide more choices for
3 property owners; and

4 **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen
5 qualifications and consumer protection disclosure requirements for PACE Programs for
6 Residential and Non-Residential Properties that provide financing for qualifying
7 improvements in accordance with Section 163.08, Florida Statutes, and provisions of this
8 Ordinance; and

9 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
10 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
11 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the
12 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-
13 012).

14

15 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

17 **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**
18 **amended as follows:**

19 For purposes of this Ordinance, the following words and phrases shall have the
20 following meanings:

21 (1) ~~*Board of County Commissioners*~~ *Board or County* is the Palm Beach County Board of
22 County Commissioners.

23 (2) *Fair Market Value* shall be that value determined by the Palm Beach County Property
24 Appraiser for the most recent calendar year, by a credentialed commercial property appraiser
25 or licensed realtor, by a reputable automated valuation service, or model preapproved by the
26 County.

27 (23) *Financing Agreement* shall mean the financing agreement or the summary memorandum
28 of such agreement the property owner signs establishing terms and conditions for the financing
29 of qualifying improvements which is required to be recorded in the public records pursuant
30 to the PACE Statute.

31 (34) *Qualifying Improvements* shall mean energy conservation and efficiency, renewable
32 energy, and wind resistance improvements as defined by F.S. § 163.08, as may be amended by

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 law.

2 (5) PACE Third-Party Administrator shall mean the entity administering the PACE Program
3 and operating on behalf of the PACE Agency/Authority/District.

4 (56) PACE Agencies/Authorities/Districts shall mean one or more local governments defined
5 in Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE
6 financing for Qualifying Improvements.

7 (47) PACE Assessment shall mean the non-ad valorem assessment placed on a property
8 owner's tax bill as a result of financing obtained pursuant to this Ordinance for
9 Qualifying Improvements.

10 (68) PACE Program shall mean the County's provision through interlocal agreements with
11 PACE Agencies/Authorities/Districts offering financing for qualifying improvements as
12 approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further refined
13 in this Ordinance, as may be amended by law.

14 (79) PACE Statute shall mean Section 163.08, Florida Statutes and all future amendments
15 thereto.

16 (810) Residential Property shall mean a residential property consisting of four (4) or less
17 residential units.

18 (911) Non-Residential Property shall mean commercial, industrial, agricultural, mixed use and
19 residential properties consisting of five (5) or more residential dwelling units.

20 **Section 2. Chapter 17, Article XVII, Section 17-505, entitled "PACE PROGRAM**
21 **AUTHORIZATION" is hereby amended as follows:**

22 (1) PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
23 Administrators offering financing for Qualifying Improvements on Residential and Non-
24 Residential Properties pursuant to this Ordinance shall be approved by the County and
25 authorized through interlocal agreements to provide financing subject to the requirements
26 of this Ordinance and the PACE Statute. A resolution indicating the County's desire to
27 join a PACE ~~agency/authority/district~~Agency/Authority/District shall be prepared by
28 County staff and presented to the Board for consideration with each interlocal agreement.
29 The interlocal agreements shall include specific terms and conditions for PACE
30 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
31 Administrators to operate within Palm Beach County.

1 (2) PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
2 Administrators desiring to provide financing pursuant to this Ordinance shall provide
3 sufficient documentation as requested by the County to provide reasonable assurance that
4 the requirements of this Ordinance and the PACE Statute can be met by the PACE
5 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
6 Administrators. Document requests shall include but are not limited to a list of Qualifying
7 Improvements, standard financing agreements, consumer protection provisions, and
8 certificates of insurance. PACE Agencies/Authorities/Districts and Third-Party
9 Administrators shall comply with reasonable requests for data and business practices
10 within 90 days, consistent with state and federal law.

11 **Section 3. Chapter 17, Article XVII, Section 17-506, entitled “DISCLOSURE**
12 **REQUIREMENTS” is hereby amended as follows:**

13 (a) For Residential Properties, in addition to any disclosure requirements in the PACE Statute,
14 PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
15 Administrators that extend financing pursuant to the PACE Statute and levy non-ad valorem
16 assessments to fund the qualifying improvements ~~shall present~~must have the property owner
17 sign a separate, written notice. The County will provide the PACE
18 Agencies/Authorities/Districts and Third-Party Administrators with a template for the notice
19 that the PACE Agencies/Authorities must distribute to property owners, disclosing the
20 following ("Residential Consumer Disclosure Notice"):

- 21 (1) The estimated total amount of the debt, including amount financed, fees, fixed
22 interest rate, capitalized interest and the effective rate of the interest charged (“Annual
23 Percentage Rate” or “APR”);
- 24 (2) That PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-
25 Party Administrators may only offer fixed simple interest rates and payments that fully
26 amortize the obligation. Variable or negative amortization financing terms are not
27 permitted. Capitalized interest included in the original balance of a PACE financing
28 agreement does not constitute negative amortization.
- 29 (3) The repayment process and terms, amounts and a schedule that fully amortizes the
30 amount financed including the estimated annual PACE assessment;
- 31 (4) That the PACE assessment will appear on the property owner's tax bill;
- 32 (5) That there is no discount for paying the PACE assessment early;

- 1 (6) The nature of the lien recorded and that the PACE assessment will be collected in
2 the same manner as real estate taxes. That failure to pay the PACE assessment may
3 cause a tax certificate to be issued against the property, and that failure of payment
4 thereof may result in the loss of property subject to the PACE assessment, including
5 homestead property, in the same manner as failure to pay property taxes;
- 6 (7) The specific improvements to be financed and installed and that such improvements
7 and PACE assessment may or may not affect the overall value of the property;
- 8 (8) A PACE assessment payment term that does not exceed the useful life of the
9 improvements, as determined by reputable third-party sources, including but not
10 limited to, the U.S. Department of Energy;
- 11 (9) The right of pre-payment without penalty;
- 12 (10) Notice that the property owner may be required to pay any PACE assessment in
13 full at the time of refinance or sale of the property;
- 14 (11) The three-day right to cancel the financing. PACE Agencies/Authorities/Districts
15 and Third-Party Administrators must furnish to the property owner a notice of the right
16 to rescind the PACE financing agreement. Either party to the agreement may exercise
17 the right to rescind until midnight of the third business day following the execution of
18 the agreement by giving notice to the other party by either certified or registered mail
19 or electronic mail.
- 20 (12) A PACE contractor may not begin construction work before the expiration of the
21 cancellation period following the execution of a PACE financing agreement. In the
22 event of an emergency, PACE contractors may perform mitigation to stabilize the
23 situation. For the purposes of this section, an emergency is defined as a situation that
24 poses an immediate threat to the health, safety, or well-being of the property owner and
25 requires immediate abatement by the installation of a Qualifying Improvement.
- 26 (13) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party
27 Administrators may not disclose or permit disclosure to a PACE contractor or third-party
28 engaged in soliciting financing agreements of the maximum amount of the PACE
29 financing for which a property owner is eligible; and
- 30 (14) That the County has programs that property owners may qualify for to fund
31 improvements, such as the Weatherization Assistance Programs. The County retains
32 the right to provide information about County programs within and/or in addition to

1 the Residential Consumer Disclosure Notice, which the PACE
2 Agencies/Authorities/District and Third-Party Administrator must provide to the
3 homeowner.

4 (15) Pursuant to section 197.3632, PACE Agencies/Authorities/Districts and Third-
5 Party Administrators are responsible for submitting all PACE assessments to the Tax
6 Collector's Office on a certified non-ad valorem assessment roll, free of errors and
7 omissions. If the Tax Collector's Office discovers errors or omissions on a roll, it may
8 request the PACE Agency/Authority/District to file a corrected roll or a correction of
9 the amount of any PACE assessment.

10 ~~(b) The Notice must be delivered to the property owner by the PACE agency/authority/district~~
11 ~~and must be signed and dated by the property owner prior to or contemporaneously with the~~
12 ~~property owner's signing of any legally enforceable documents under the PACE program. The~~
13 ~~property owner and the PACE agency/authority/district must keep the signed Notice with the~~
14 ~~property owner's executed financing agreement.~~

15 ~~(c) The PACE agency/authority/district shall record, or cause to be recorded, the financing~~
16 ~~agreement or a summary memorandum of the financing agreement, in accordance with F.S. §~~
17 ~~163.08(8).~~

18 (b) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any
19 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and Third-
20 Party Administrators that extend financing pursuant to the PACE Statute and levy non-ad
21 valorem assessments to fund the Qualifying Improvements shall have the property owner sign
22 a separate, written notice. The County will provide the PACE Agencies/Authorities/Districts
23 and Third-Party Administrators with a template for the notice that the
24 Agencies/Authorities/Districts and Third-Party Administrators must distribute to property
25 owners, disclosing the following ("Non-Residential Consumer Disclosure Notice"):

26 (1) The estimated total amount of the debt, including amount financed, fees, fixed
27 interest rate, capitalized interest and the effective rate of the interest charged (APR);

28 (2) That PACE Agencies/Authorities/Districts and Third-Party Administrators may
29 only offer fixed simple interest rates and payments that fully amortize the obligation.
30 Variable or negative amortization financing terms are not permitted. Capitalized
31 interest included in the original balance of a PACE financing does not constitute
32 negative amortization.

- 1 (3) The repayment process and terms, amounts and a schedule that fully amortizes the
2 amount financed including the estimated annual PACE assessment.
- 3 (4) That the PACE assessment will appear on the property owner's tax bill.
- 4 (5) That there is no discount for paying the PACE assessment early.
- 5 (6) The nature of the lien recorded and that the PACE assessment will be collected in
6 the same manner as real estate taxes. That failure to pay the PACE assessment may
7 cause a tax certificate to be issued against the property, and that failure of payment
8 thereof may result in the loss of property subject to the PACE assessment in the same
9 manner as failure to pay property taxes;
- 10 (7) The specific improvements to be financed and installed and that such improvements
11 and PACE assessment may or may not affect the overall value of the property;
- 12 (8) A PACE assessment payment term that does not exceed the useful life of the
13 improvements, as determined by reputable third-party sources, including but not
14 limited to, the U.S. Department of Energy;
- 15 (9) Notice that the property owner may be required to pay any PACE assessment in full
16 at the time of refinance or sale of the property; and
- 17 (10) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and
18 Third-Party Administrators must furnish to the property owner a notice of the right to
19 rescind the PACE financing agreement. Either party to the agreement may exercise the
20 right to rescind until midnight of the third business day following the execution of the
21 agreement by giving notice to the other party by either certified or registered mail or
22 electronic mail.
- 23 (11) A PACE contractor may not begin construction work before the expiration of the
24 cancellation period following the execution of a PACE financing agreement. In the
25 event of an emergency, PACE contractors may perform mitigation to stabilize the
26 situation. For the purposes of this section, an emergency is defined as a situation that
27 poses an immediate threat to the health, safety or well-being of the property owner and
28 requires immediate abatement by the installation of a Qualifying Improvement;
- 29 (12) Pursuant to section 197.3632, PACE Agencies/Authorities/Districts and Third-
30 Party Administrators are responsible for submitting all PACE assessments to the Tax
31 Collector's Office on a certified non-ad valorem assessment roll, free of errors and
32 omissions. If the Tax Collector's Office discovers errors or omissions on a roll, it may

1 request the PACE Agency/Authority/Agency to file a corrected roll or a correction of
2 the amount of any PACE assessment.

3 (c) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators
4 providing PACE financing in the amount of \$250,000 or greater are not required to provide a
5 Consumer Disclosure Notice. However, they are required to conform to the obligations set
6 forth in in Section 6(2).

7 (d)For both Residential and Non-Residential where applicable, PACE
8 Agency/Authority/District or Third Party-Administrators must fully implement and utilize
9 updated and approved Palm Beach County Consumer Disclosure Notices within one hundred
10 and eighty (180) days of receipt. The Consumer Disclosure Notices must be completed and
11 delivered to the property owner by the PACE Agency/Authority/District or Third Party-
12 Administrator and must be signed and dated by the property owner prior to or
13 contemporaneously with the property owner's signing of any legally enforceable documents
14 under the PACE Program. The PACE Agency/Authority/District or Third Party-Administrator
15 must offer to provide a hardcopy of the Consumer Disclosure Notice to the property owner;
16 should the property owner prefer a hardcopy, the PACE Agency/Authority/District or Third
17 Party Administrator must provide the hardcopy within the three-day right to cancel window.
18 The property owner and the PACE Agency/Authority/District or Third-Party Administrator
19 must keep the signed Consumer Disclosure Notice with the property owner's executed
20 financing agreement. The PACE Agency/Authority/District or Third-Party Administrator shall
21 provide the signed Consumer Disclosure Notice to the Palm Beach County Office of Resilience
22 and the Palm Beach County Tax Collector in electronic format within five (5) business days
23 after execution of the PACE financing agreement. Failure by PACE
24 Agencies/Authorities/Districts, Third-Party Administrators, and PACE Contractors to comply
25 with disclosure requirements or the obligations contained in this section shall constitute a
26 violation of this Ordinance and may subject violators to penalty as provided by Section 17-
27 507(a)(14), and General Law.

28 (e) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause
29 to be recorded, the financing agreement or a summary memorandum of the financing
30 agreement, in accordance with Section 163.08(8), Florida Statutes.

31 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**
32 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 (a) As defined in the PACE Statute, PACE ~~agencies/authorities/districts~~
2 Agencies/Authorities/Districts and Third-Party Administrators that extend financing pursuant
3 to the PACE Statute and levy non-ad valorem assessments to fund the qualifying improvements
4 shall comply with the following: terms of this subsection. Subsections apply to both
5 Residential and Non-Residential Properties except where the subsection specifically refers to
6 Residential or Non-Residential. Extending financing to ineligible property owners shall
7 constitute a violation of this Ordinance and may subject violators to penalty as provided by
8 Section 17-507(a)(14), and General Law.

9 (1) Residential Property. PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts
10 and Third-Party Administrators may finance ~~q~~Qualifying ~~i~~Improvements on Residential
11 ~~p~~Properties provided they comply with the following criteria inclusive of all eligibility
12 criteria listed in the PACE Statute and all future amendments thereto, along with additional
13 consumer protections.

14 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
15 otherwise secured by the property, the total amount of any non-ad valorem assessment
16 for a property under the PACE Statute may not exceed twenty (20) percent of the
17 ~~just/fair~~ value of the property as determined by the county property appraiser, excepted
18 as otherwise provided by statute; and

19 (b) All property taxes and other assessments levied on the property tax bill have been paid
20 and have not been delinquent for the preceding three years, or the property owner's
21 period of ownership, whichever is less; and

22 (c) There are no involuntary liens, including but not limited to construction liens on the
23 property; and

24 (d) No notices of default or other evidence of property-based debt delinquency have been
25 recorded during the preceding three (3) years, or the property owner's period of
26 ownership, whichever is less; and, additionally

27 (e) All mortgage debt on the property is current and not delinquent; and

28 (f) All mortgage-related debt on the underlying property may not exceed ninety percent
29 (90%) of the property's ~~f~~Fair ~~m~~Market ~~v~~Value; ~~and~~

30 (g) The total mortgage-related debt on the underlying property plus the PACE Program
31 financing may not exceed the ~~f~~Fair ~~m~~Market ~~v~~Value of the property.

32 (h) Underwriting for Qualifying Residential Properties

- 1 1. For property owners whose annual income is greater than one hundred twenty
2 percent (120%) of the average median income for Palm Beach County, as most
3 recently published by the U.S. Department of Housing and Urban Development
4 (HUD) in the HUD Income Limits Summary, at least one (1) of the following:
5 (1) Financing Limits: ensure that the total amount of any annual property taxes and
6 assessments does not exceed five percent (5%) of the property's Fair Market
7 Value, determined at the time financing is approved, and ensure that the total
8 amount of annual PACE assessments does not exceed four percent (4%) of the
9 total annual gross income of the property owner in the prior calendar or fiscal
10 year, based upon an affidavit or attestation by the property owner of the owner's
11 total annual gross income;
12 (2) Mortgage Holder Consent or Escrow: verify that each prior mortgage or
13 financing instrument holder has consented to any proposed Financing
14 Agreement and PACE Assessment, or that the prior mortgage or financing
15 instrument holder or loan servicer has consented to escrow sufficient funds to
16 ensure payment of the annual assessment with each year's tax bill; or
17 (3) Insurance or Energy Savings: verify that the total cost of the Financing
18 Agreement or PACE Assessment is equal to or less than the projected savings
19 to the property owner based upon the projected energy savings in a written
20 statement from a Certified Energy Auditor, certified by the Association of
21 Energy Engineers, the Residential Energy Services Network, or the Building
22 Performance Institute, or the projected insurance savings in a written statement
23 from the property owner's insurer.
24 2. For property owners whose annual income is equal to or less than one hundred
25 twenty percent (120%) of the average median income for Palm Beach County, as
26 most recently published by HUD in the HUD Income Limits Summary, financing
27 limitations to ensure that the total amount of any annual property taxes and
28 assessments does not exceed five percent (5%) of the property's Fair Market Value,
29 determined at the time financing is approved, and ensure that the total amount of
30 annual PACE assessments does not exceed four percent (4%) of the total annual
31 gross income of the property owner in the prior calendar or fiscal year, based upon
32 an affidavit or attestation by the property owner of the owner's total annual gross

1 income.

2 (2) Non-Residential Properties. PACE ~~agencies/authorities/districts~~

3 Agencies/Authorities/Districts and Third-Party Administrators may finance Qualifying

4 Improvements on Non-Residential Properties provided they comply with the ~~requirements~~

5 ~~set forth~~ following criteria inclusive of all eligibility criteria listed in the PACE Statute and

6 ~~all future amendments thereto and inclusive of those listed under Section 17-507(a)(1)(a.—~~

7 ~~d.) of this article.,~~ along with the following consumer protections.

8 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or

9 otherwise secured by the property, the total amount of any non-ad valorem assessment

10 for a property under the PACE Statute may not exceed twenty percent (20%) of the just

11 value of the property as determined by the county property appraiser, excepted as

12 otherwise provided by statute; and

13 (b) All property taxes and other assessments levied on the property tax bill have been paid

14 and have not been delinquent for the preceding three years, or the property owner’s

15 period of ownership, whichever is less; and

16 (c) There are no involuntary liens, including but not limited to construction liens on the

17 property; and

18 (d) No notices of default or other evidence of property-based debt delinquency have been

19 recorded during the preceding three years, or the property owner’s period of ownership,

20 whichever is less; and,

21 (e) All mortgage debt on the property is current and not delinquent.

22 (3) Qualifying Improvements. The PACE ~~agency/authority/district~~ Agency/Authority/District

23 and Third Party Administrator will finance energy efficiency, renewable energy and wind

24 resistant improvements that are permanently affixed to the property as more specifically

25 described in the PACE Statute. All improvements and products should identify efficiency

26 standards established by the U.S. Department of Energy, the U.S. Environmental

27 Protection Agency, or Florida state agencies as applicable. All ~~q~~Qualifying i ~~l~~Improvements

28 must comply with the PACE Statute for energy efficiency, renewable energy, and wind

29 resistance or other improvements as permissible by law. PACE

30 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third Party

31 Administrators shall establish procedures confirming that the property owner applying for

32 financing through the PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts

1 and Third Party Administrators intends to install ~~eligible products~~ Qualifying
2 Improvements, and that at the time of funding such improvements have been installed.

3 (4) Inquiries and Complaints.

4 (a) Complaints. ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts and
5 Third Party Administrators ~~shall be~~ are required to receive, manage, track, timely
6 resolve, and report on complaints from property owners regarding the funded work
7 performed by the contractors. ~~The~~ PACE agency/authority/district
8 Agencies/Authorities/Districts and Third Party Administrators ~~shall~~ must investigate
9 and mediate disputes between property owners and contractors in a timely manner.

10 (b) Payment inquiries. ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts
11 and Third Party Administrators are required to respond to inquiries and resolve any
12 issues in a timely manner, related to payments, including but not limited to prepayments
13 and payment reconciliation.

14 (c) Review. In the event that ten percent or more of a PACE ~~agency's/authority's/district's~~
15 Agency's/Authority's/District's and Third Party Administrator's projects result in
16 complaints or disputes, or such complaints or disputes remain unresolved six (6)
17 months after completion of a project, the County may review the PACE
18 ~~agency's/authority's/district's~~ handling of complaints and may request corrective
19 actions or initiate suspension proceedings pursuant to Section 17-507(a)(124).

20 (5) Data Security. ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts and
21 Third Party Administrators are responsible for taking security measures that protect the
22 security and confidentiality of consumer records and information in proportion to the
23 sensitivity of the information, and as required by state and federal law.

24 (6) Consumer Privacy. ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts
25 and Third Party Administrators must develop and maintain a privacy policy that complies
26 with local, state, and federal law and, in particular, shall provide a property owner the
27 ability to opt-out of having the property owner's information shared with third parties,
28 except where expressly permitted by local, state, and federal law.

29 (7) Marketing and Communications. Marketing practices for a PACE agency/authority/district
30 Agencies/Authorities/Districts and Third Party Administrators that are or could appear to
31 be unfair, deceptive, abusive, or misleading, or that violate applicable laws or regulations,
32 that are inappropriate, incomplete or are inconsistent with the PACE

1 ~~agency's/authority's/district's~~ Agency's/Authority's/District or Third-Party
2 Administrator's purpose are prohibited. Prohibitions include, but are not limited to, any
3 statement that PACE financing is a free form of public assistance, that PACE financing is
4 a Palm Beach County government program, that PACE financing will be repaid by the
5 subsequent owner of the qualifying residential property, that the improvements will pay
6 for themselves, or that the property owner will receive tax benefits from the program.

7 (8) *Protected Classes.* ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts and
8 Third Party Administrators shall not discriminate against individuals on the basis of race,
9 color, ancestry, disability, national origin, religion, age, familial status, marital status, sex,
10 gender, sexual orientation, gender identity and expression, or genetic information.

11 (9) *Contractor Management.*

12 (a) ~~Any work under a PACE agency/authority/district requiring a license under any~~
13 ~~applicable law to make a qualifying improvement shall be performed by a contractor~~
14 ~~properly licensed, certified or registered pursuant to state or local law. Before financing~~
15 a Qualifying Improvement, PACE Agencies/Authorities/Districts or Third-Party
16 Administrators make a reasonable effort to investigate contractors selected to install a
17 Qualifying Improvement for the following:

- 18 1. Status of all State and local licenses, registrations and/or certifications;
- 19 2. Relevant work or project history;
- 20 3. Financial and reputational background checks;
- 21 4. Criminal background check; and
- 22 5. Status on Better Business Bureau or other online platforms that track contractor
23 reviews.

24 (b) ~~Contractors performing work under a PACE agency/authority/district shall comply~~
25 ~~with each of the following conditions: (i) Be licensed and insured pursuant to the~~
26 ~~applicable statutory requirements; (ii) Agree to comply with all program requirements~~
27 ~~and marketing guidelines; (iii) Act in good faith to timely resolve property owner~~
28 ~~complaints. A PACE Agencies/Authorities/Districts and Third-Party Administrators~~
29 must memorialize their reasonable efforts to investigate selected contractors in
30 contractor investigation reports. Contractor investigation reports must be maintained
31 and made available for review by property owners and the County, as permitted by law.

32 A PACE Agency/Authority/District or Third-Party Administrator may not finance

1 Qualifying Improvements that are installed by contractors that PACE
2 Agency/Authority/Districts and Third-Party Administrators know, or should know, are
3 not properly licensed, registered, certified, or otherwise legally authorized to perform
4 such work.

5 (c) PACE Agencies/Authorities/Districts and Third-Party Administrators must obtain the
6 contractor's written agreement that the contractor shall comply with each of the following
7 conditions:

- 8 1. Be licensed and insured pursuant to the applicable state and local requirements;
- 9 2. Agree to comply with all program requirements and marketing guidelines;
- 10 3. Act in good faith to timely resolve property owner complaints; and
- 11 4. Agree to not present a higher price for a qualifying improvement on residential real
12 property financed by a PACE financing agreement than the contractor would otherwise
13 reasonably present if the qualifying improvement were not being financed through a
14 PACE financing agreement.

15 (ed) PACE Programs Agencies/Authorities/Districts and Third-Party Administrators
16 shall have and shall strictly enforce anti-kickback policies and procedures that prohibit
17 direct financial or other monetary incentives to contractors in exchange for or related
18 to such contractor being awarded work under a PACE Program, excepting payment for
19 the contractor's installation of Qualifying Improvements.

20 (10) Financing. The PACE agency/authority/district Agencies/Authorities/Districts and
21 Third-Party Administrators will establish pricing rules and enforcement mechanisms to
22 ensure property owners are protected from excessive or unjustified prices and charges. In
23 addition, PACE Agencies/Authorities/Districts and Third-Party Administrators shall must
24 require compliance with each of the following conditions prior to the issuance of any final
25 disbursement to the contractor:

- 26 (a) Contractors have certified that any necessary permits have been obtained;
- 27 (b) Verification that the Qualifying Improvements have been installed;
- 28 (c) The property owner and the contractor have signed a final inspection and/or certificate
29 of completion that all improvements have been installed to the property owner's
30 satisfaction.

31 (11) Reporting. Each PACE Agency/Authority/District and Third-Party Administrator shall
32 must provide a report to the County on a quarterly calendar basis, due 30 days following

1 the close of the quarter. Each PACE Agency/Authority/District and Third-Party
2 Administrator shall utilize the County-supplied spreadsheet for the report. This spreadsheet
3 shall not be modified, though additional information may be supplied in a separate
4 spreadsheet. The quarterly reports shall include, at a minimum, the following information:

5 (a) Dates of the reporting period;

6 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel
7 control numbers, financed amount, annual estimated payments, interest rate,
8 assessment duration, and project description) started during the reporting period,
9 separated by building type (e.g., single family, multifamily, retail, office, industrial,
10 etc.);

11 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel
12 control numbers) completed during the reporting period, separated by building type
13 project (e.g., single family, multifamily, retail, office, industrial, etc.). For each project,
14 specify:

15 1. The qualifying improvements made;

16 2. Project start date and completion date;

17 3. The projected energy savings and/or amount of potential renewable energy to be
18 generated;

19 4. Financial information such as cost per kilowatt hour saved/generated;

20 5. Other resource savings if data is available; and

21 6. Audits performed detailing the audit results, if applicable to the project;

22 7. Total amount financed, including percent (%) of financing spent on each
23 improvement, if multiple;

24 8. Annual estimated payments;

25 (d) Number of actual or estimated jobs created during the reporting period, including local
26 versus non-local jobs and permanent versus temporary jobs;

27 (e) Number of applications declined during the reporting period;

28 (f) ~~Unresolved complaints and/or contractor issues and status; and Resolved and~~
29 unresolved complaints and/or contractor issues and status, including category of each

30 complaint and/ or issue, when the complaint/issue was filed, and when the
31 complaint/issue was resolved; and

32 (g) ~~Description of the standardized third-party methodologies and supporting assumptions~~

1 used to verify data, and any changes in the methodologies and assumptions from the
2 previous reporting period. Assumptions and methodologies used for energy savings,
3 renewable energy, cost per kilowatt hour saved/generated, other resource savings,
4 audits, and jobs calculations under this subsection, including third-party sources,
5 standard equations, and calculation factors. Describe any changes in the methodologies
6 and assumptions from the previous reporting period. PACE
7 Agencies/Authorities/Districts and Third-Party Administrators shall work together to
8 standardize their assumptions and methodologies so that reporting is consistent. The
9 County reserves the right to provide standard assumption and methodology sources for
10 these calculations that the PACE Agencies/Authorities/Districts and Third-Party
11 Administrators must use within 90 days of receipt.

12 (h) Fair Market Value of property and method for determining Fair Market Value.

13 (12) Data and Document Requests. Each PACE Agency/Authority/District and Third Party
14 Administrator must comply with reasonable requests for additional data or documents from
15 the County and provide such data within 60 days of the request, consistent with federal and
16 state law.

17 (13) Incomplete Data or Late Reporting. In the event any PACE Agency/Authority/District
18 or Third Party Administrator fails to provide complete data or provide reports by the stated
19 due dates, they will be given 60 days to cure the defect, after which written notice will be
20 given prior to any administrative act to suspend. The suspension will take place 30 days
21 after this notice is given. After such defect, any new project starts from the PACE
22 Agency/Authority/District or Third-Party Administrator of which the reports are
23 incomplete will be suspended until the complete data is provided. The right to cure is an
24 option before suspension or termination will occur. Suspension will be done by the County
25 Administrator or designee.

26 (14) Suspension or Termination of PACE ~~a~~Agency/~~a~~Authority/~~d~~District. In the event any
27 PACE Agency/Authority/District fails to incorporate and continually provide for all of the
28 foregoing service components or to otherwise abide by the provisions of this Ordinance
29 and/or the interlocal agreement the County, in its sole discretion, may suspend or terminate
30 the interlocal agreement and support of the County at any time upon written notice to that
31 PACE Agency/Authority/District. Suspension or termination will be done by the County
32 Administrator or designee. Any project that has been initiated or received PACE financing

1 as of the time of suspension or termination shall be permitted to be completed, and continue
2 until such time that all outstanding debt has been satisfied.

3 (15) Administrative Fees. PACE Agencies/Authorities/Districts and Third-Party
4 Administrators will be responsible for paying administrative fees to the County on an
5 annual basis. The Board will establish fees for administrative tasks carried out by County
6 staff, including interlocal agreements, indemnification agreement for new PACE
7 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects
8 funded during the year, and Non-Residential projects funded during the year. PACE
9 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual
10 summary of all projects completed within that year and provide a payment per project to
11 the County.

12 **Section 5. REPEAL OF LAWS IN CONFLICT:**

13 All local laws and ordinances in conflict with any provisions of this Ordinance are
14 hereby repealed to the extent of such conflict.

15 **Section 6. SAVINGS CLAUSE:**

16 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all
17 administrative and court orders, fines, and pending enforcement issued pursuant to this
18 authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County
19 Code shall remain in full force and effect.

20 **Section 7. SEVERABILITY:**

21 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
22 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
23 such holding shall not affect the remainder of this Ordinance.

24 **Section 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

25 The provisions of this Ordinance shall become and be made a part of the Palm Beach
26 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
27 such, and the word Ordinance may be changed to section, article, or other appropriate word.

28 **Section 9. ENFORCEMENT:**

29 This Ordinance is enforceable by all means provided by law. Additionally, the County
30 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
31 Beach County.

1 **Section 10. PENALTY:**

2 Any violation of any portion of this Ordinance shall be punishable as provided by law.

3 **Section 11. CAPTIONS:**

4 The captions, section headings and section designations used in this Ordinance are for
5 convenience only and shall have no effect on the interpretation of the provisions of this
6 Ordinance.

7 **Section 12. EFFECTIVE DATE:**

8 The provisions of this Ordinance shall become effective upon filing with the
9 Department of State.

10 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
11 Beach County, Florida, on this the ____ day of _____, 20____.

12
13

14 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

15
16
17
18

19 **By:** _____
20 **Deputy Clerk**

By: _____
Robert Weinroth, Mayor

21

22 **APPROVED AS TO FORM AND**
23 **LEGAL SUFFICIENCY**

24
25
26

27 **By:** _____
28 **County Attorney**

29

30 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
31 _____, 20____.

Attach 2
Clean

ORDINANCE NO. 20____ - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and
2 Non-Residential Properties have been established across the country to provide mechanisms
3 for funding energy efficiency, renewable energy, and other types of improvements to
4 residential and commercial properties; and

5 **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and
7 are administered by the local government or by for-profit or not-for-profit entities; and

8 **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid
9 as an assessment on the property's regular tax bill; and

10 **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to
12 apply to local governments for financing certain energy efficiency, renewable energy, and
13 wind resistant improvements; and

14 **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with
15 energy-related qualifying improvements benefit from reduced energy consumption, reduced
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane
17 mitigation policies; and

18 **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section
20 197.3632, Florida Statutes; and

21 **WHEREAS**, the County has entered into interlocal agreements with multiple PACE
22 Agencies/Authorities/Districts to encourage competition and provide more choices for
23 property owners; and

1 **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen
2 qualifications and consumer protection disclosure requirements for PACE Programs for
3 Residential and Non-Residential Properties that provide financing for qualifying
4 improvements in accordance with Section 163.08, Florida Statutes, and provisions of this
5 Ordinance; and

6 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
7 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
8 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the
9 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-
10 012).

11

12 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
13 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

14 **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**
15 **amended as follows:**

16 For purposes of this Ordinance, the following words and phrases shall have the
17 following meanings:

- 18 (1) *Board or County* is the Palm Beach County Board of County Commissioners.
- 19 (2) *Fair Market Value* shall be that value determined by the Palm Beach County Property
20 Appraiser for the most recent calendar year, by a credentialed commercial property
21 appraiser or licensed realtor, by a reputable automated valuation service, or model
22 preapproved by the County.
- 23 (3) *Financing Agreement* shall mean the financing agreement or the summary memorandum
24 of such agreement the property owner signs establishing terms and conditions for the
25 financing of qualifying improvements which is required to be recorded in the public
26 records pursuant to the PACE Statute.
- 27 (4) *Qualifying Improvements* shall mean energy conservation and efficiency, renewable
28 energy, and wind resistance improvements as defined by Section 163.08, Florida Statutes,
29 as may be amended by law.
- 30 (5) *PACE Third-Party Administrator* shall mean the entity administering the PACE Program
31 and operating on behalf of the PACE Agency/Authority/District.
- 32 (6) *PACE Agencies/Authorities/Districts* shall mean one or more local governments defined

1 in Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE
2 financing for Qualifying Improvements.

3 (7) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property
4 owner's tax bill as a result of financing obtained pursuant to this Ordinance for
5 Qualifying Improvements.

6 (8) *PACE Program* shall mean the County's provision through interlocal agreements with
7 PACE Agencies/Authorities/Districts offering financing for qualifying improvements as
8 approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further
9 refined in this Ordinance, as may be amended by law.

10 (9) *PACE Statute* shall mean Section 163.08, Florida Statutes and all future amendments
11 thereto.

12 (10) *Residential Property* shall mean a residential property consisting of four (4) or less
13 residential units.

14 (11) *Non-Residential Property* shall mean commercial, industrial, agricultural, mixed use and
15 residential properties consisting of five (5) or more residential dwelling units.

16 **Section 2. Chapter 17, Article XVII, Section 17-505, entitled "PACE PROGRAM**
17 **AUTHORIZATION" is hereby amended as follows:**

18 (1) PACE Agencies/Authorities/Districts and Third-Party Administrators offering financing
19 for Qualifying Improvements on Residential and Non-Residential Properties pursuant to
20 this Ordinance shall be approved by the County and authorized through interlocal
21 agreements to provide financing subject to the requirements of this Ordinance and the
22 PACE Statute. A resolution indicating the County's desire to join a PACE
23 Agency/Authority/District shall be prepared by County staff and presented to the Board for
24 consideration with each interlocal agreement. The interlocal agreements shall include
25 specific terms and conditions for PACE Agencies/Authorities/Districts and Third-Party
26 Administrators to operate within Palm Beach County.

27 (2) PACE Agencies/Authorities/Districts and Third-Party Administrators desiring to provide
28 financing pursuant to this Ordinance shall provide sufficient documentation as requested
29 by the County to provide reasonable assurance that the requirements of this Ordinance and
30 the PACE Statute can be met by the PACE Agency/Authority/District and Third-Party
31 Administrators. Document requests shall include but are not limited to a list of Qualifying
32 Improvements, standard financing agreements, consumer protection provisions, and

1 certificates of insurance. PACE Agencies/Authorities/Districts and Third-Party
2 Administrators shall comply with reasonable requests for data and business practices
3 within 90 days, consistent with state and federal law.

4 **Section 3. Chapter 17, Article XVII, Section 17-506, entitled “DISCLOSURE**
5 **REQUIREMENTS” is hereby amended as follows:**

6 (1) For Residential Properties, in addition to any disclosure requirements in the PACE Statute,
7 PACE Agencies/Authorities/Districts and Third-Party Administrators that extend
8 financing pursuant to the PACE Statute and levy non-ad valorem assessments to fund the
9 qualifying improvements must have the property owner sign a separate, written notice. The
10 County will provide the PACE Agencies/Authorities/Districts and Third-Party
11 Administrators with a template for the notice that the PACE Agencies/Authorities must
12 distribute to property owners, disclosing the following ("Residential Consumer Disclosure
13 Notice"):

14 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest
15 rate, capitalized interest and the effective rate of the interest charged (“Annual
16 Percentage Rate” or “APR”);

17 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
18 offer fixed simple interest rates and payments that fully amortize the obligation.
19 Variable or negative amortization financing terms are not permitted. Capitalized
20 interest included in the original balance of a PACE financing agreement does not
21 constitute negative amortization.

22 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
23 amount financed including the estimated annual PACE assessment;

24 (d) That the PACE assessment will appear on the property owner's tax bill;

25 (e) That there is no discount for paying the PACE assessment early;

26 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
27 same manner as real estate taxes. That failure to pay the PACE assessment may cause
28 a tax certificate to be issued against the property, and that failure of payment thereof
29 may result in the loss of property subject to the PACE assessment, including homestead
30 property, in the same manner as failure to pay property taxes;

31 (g) The specific improvements to be financed and installed and that such improvements
32 and PACE assessment may or may not affect the overall value of the property;

- 1 (h) A PACE assessment payment term that does not exceed the useful life of the
2 improvements, as determined by reputable third-party sources, including but not
3 limited to, the U.S. Department of Energy;
- 4 (i) The right of pre-payment without penalty;
- 5 (j) Notice that the property owner may be required to pay any PACE assessment in full at
6 the time of refinance or sale of the property;
- 7 (k) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and
8 Third-Party Administrators must furnish to the property owner a notice of the right to
9 rescind the PACE financing agreement. Either party to the agreement may exercise the
10 right to rescind until midnight of the third business day following the execution of the
11 agreement by giving notice to the other party by either certified or registered mail or
12 electronic mail.
- 13 (l) A PACE contractor may not begin construction work before the expiration of the
14 cancellation period following the execution of a PACE financing agreement. In the
15 event of an emergency, PACE contractors may perform mitigation to stabilize the
16 situation. For the purposes of this section, an emergency is defined as a situation that
17 poses an immediate threat to the health, safety, or well-being of the property owner and
18 requires immediate abatement by the installation of a Qualifying Improvement;
- 19 (m) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party
20 Administrators may not disclose or permit disclosure to a PACE contractor or third-party
21 engaged in soliciting financing agreements of the maximum amount of the PACE
22 financing for which a property owner is eligible; and
- 23 (n) That the County has programs that property owners may qualify for to fund
24 improvements, such as the Weatherization Assistance Programs. The County retains
25 the right to provide information about County programs within and/or in addition to
26 the Residential Consumer Disclosure Notice, which the PACE
27 Agencies/Authorities/District and Third-Party Administrator must provide to the
28 homeowner.
- 29 (o) Pursuant to section 197.3632, PACE Agencies/Authorities/Districts and Third-Party
30 Administrators are responsible for submitting all PACE assessments to the Tax
31 Collector's Office on a certified non-ad valorem assessment roll, free of errors and
32 omissions. If the Tax Collector's Office discovers errors or omissions on a roll, it may

1 request the PACE Agency/Authority/Agency to file a corrected roll or a correction of
2 the amount of any PACE assessment.

3 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any
4 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and
5 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy
6 non-ad valorem assessments to fund the Qualifying Improvements shall have the property
7 owner sign a separate, written notice. The County will provide the PACE
8 Agencies/Authorities/Districts and Third-Party Administrators with a template for the
9 notice that the Agencies/Authorities/Districts and Third-Party Administrators must
10 distribute to property owners, disclosing the following ("Non-Residential Consumer
11 Disclosure Notice"):

12 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest
13 rate, capitalized interest and the effective rate of the interest charged (APR);

14 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
15 offer fixed simple interest rates and payments that fully amortize the obligation.
16 Variable or negative amortization financing terms are not permitted. Capitalized
17 interest included in the original balance of a PACE financing does not constitute
18 negative amortization.

19 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
20 amount financed including the estimated annual PACE assessment;

21 (d) That the PACE assessment will appear on the property owner's tax bill;

22 (e) That there is no discount for paying the PACE assessment early;

23 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
24 same manner as real estate taxes. That failure to pay the PACE assessment may cause
25 a tax certificate to be issued against the property, and that failure of payment thereof
26 may result in the loss of property subject to the PACE assessment in the same manner
27 as failure to pay property taxes;

28 (g) The specific improvements to be financed and installed and that such improvements
29 and PACE assessment may or may not affect the overall value of the property;

30 (h) A PACE assessment payment term that does not exceed the useful life of the
31 improvements, as determined by reputable third-party sources, including but not
32 limited to, the U.S. Department of Energy;

- 1 (i) Notice that the property owner may be required to pay any PACE assessment in full at
2 the time of refinance or sale of the property; and
- 3 (j) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and
4 Third-Party Administrators must furnish to the property owner a notice of the right to
5 rescind the PACE financing agreement. Either party to the agreement may exercise the
6 right to rescind until midnight of the third business day following the execution of the
7 agreement by giving notice to the other party by either certified or registered mail or
8 electronic mail.
- 9 (k) A PACE contractor may not begin construction work before the expiration of the
10 cancellation period following the execution of a PACE financing agreement. In the
11 event of an emergency, PACE contractors may perform mitigation to stabilize the
12 situation. For the purposes of this section, an emergency is defined as a situation that
13 poses an immediate threat to the health, safety or well-being of the property owner and
14 requires immediate abatement by the installation of a Qualifying Improvement;
- 15 (l) Pursuant to section 197.3632, PACE Agencies/Authorities/Districts and Third-Party
16 Administrators are responsible for submitting all PACE assessments to the Tax
17 Collector's Office on a certified non-ad valorem assessment roll, free of errors and
18 omissions. If the Tax Collector's Office discovers errors or omissions on a roll, it may
19 request the PACE Agency/Authority/District to file a corrected roll or a correction of
20 the amount of any PACE assessment.
- 21 (3) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators
22 providing PACE financing in the amount of \$250,000 or greater are not required to provide a
23 Consumer Disclosure Notice. However, they are required to conform to the obligations set
24 forth in in Section 6(2).
- 25 (4) For both Residential and Non-Residential where applicable, PACE
26 Agency/Authority/District or Third Party-Administrators must fully implement and utilize
27 updated and approved Palm Beach County Consumer Disclosure Notices within one hundred
28 and eighty (180) days of receipt. The Consumer Disclosure Notices must be completed and
29 delivered to the property owner by the PACE Agency/Authority/District or Third Party-
30 Administrator and must be signed and dated by the property owner prior to or
31 contemporaneously with the property owner's signing of any legally enforceable documents
32 under the PACE Program. The PACE Agency/Authority/District or Third Party-Administrator

1 must offer to provide a hardcopy of the Consumer Disclosure Notice to the property owner;
2 should the property owner prefer a hardcopy, the PACE Agency/Authority/District or Third
3 Party Administrator must provide the hardcopy within the three-day right to cancel window.
4 The property owner and the PACE Agency/Authority/District or Third-Party Administrator
5 must keep the signed Consumer Disclosure Notice with the property owner's executed
6 financing agreement. The PACE Agency/Authority/District or Third-Party Administrator shall
7 provide the signed Consumer Disclosure Notice to the Palm Beach County Office of Resilience
8 and the Palm Beach County Tax Collector in electronic format within five (5) business days
9 after execution of the PACE financing agreement. Failure by PACE
10 Agencies/Authorities/Districts, Third-Party Administrators, and PACE Contractors to comply
11 with disclosure requirements or the obligations contained in this section shall constitute a
12 violation of this Ordinance and may subject violators to penalty as provided by Subsection 15
13 of Section 7, and General Law.

14 (5) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause
15 to be recorded, the financing agreement or a summary memorandum of the financing
16 agreement, in accordance with Section 163.08(8), Florida Statutes.

17 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**
18 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

19 (1) As defined in the PACE Statute, PACE Agencies/Authorities/Districts and Third-Party
20 Administrators that extend financing pursuant to the PACE Statute and levy non-ad
21 valorem assessments to fund the qualifying improvements shall comply with the following
22 terms in this subsection. Subsections apply to both Residential and Non-Residential
23 Properties except where the subsection specifically refers to Residential or Non-
24 Residential. Extending financing to ineligible property owners shall constitute a violation
25 of this Ordinance and may subject violators to penalty as provided by Subsection 15 of
26 Section 7, and General Law.

27 (2) Residential Property. PACE Agencies/Authorities/Districts and Third-Party
28 Administrators may finance Qualifying Improvements on Residential Properties provided
29 they comply with the following criteria inclusive of all eligibility criteria listed in the PACE
30 Statute and all future amendments thereto, along with additional consumer protections.

31 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
32 otherwise secured by the property, the total amount of any non-ad valorem assessment

- 1 for a property under the PACE Statute may not exceed twenty percent (20%) of the just
2 value of the property as determined by the county property appraiser, excepted as
3 otherwise provided by statute; and
- 4 (b) All property taxes and other assessments levied on the property tax bill have been paid
5 and have not been delinquent for the preceding three years, or the property owner's
6 period of ownership, whichever is less; and
- 7 (c) There are no involuntary liens, including but not limited to construction liens on the
8 property; and
- 9 (d) No notices of default or other evidence of property-based debt delinquency have been
10 recorded during the preceding three years, or the property owner's period of ownership,
11 whichever is less; and, additionally
- 12 (e) All mortgage debt on the property is current and not delinquent; and
- 13 (f) All mortgage-related debt on the underlying property may not exceed ninety percent
14 (90%) of the property's Fair Market Value; and
- 15 (g) The total mortgage-related debt on the underlying property plus the PACE Program
16 financing may not exceed the Fair Market Value of the property.
- 17 (h) Underwriting for Qualifying Residential Properties
- 18 (i) For property owners whose annual income is greater than one hundred twenty
19 percent (120%) of the average median income for Palm Beach County, as most
20 recently published by the U.S. Department of Housing and Urban Development
21 (HUD) in the HUD Income Limits Summary, at least one (1) of the following:
- 22 (1) Financing Limits: ensure that the total amount of any annual property taxes and
23 assessments does not exceed five percent (5%) of the property's Fair Market
24 Value, determined at the time financing is approved, and ensure that the total
25 amount of annual PACE assessments does not exceed four percent (4%) of the
26 total annual gross income of the property owner in the prior calendar or fiscal
27 year, based upon an affidavit or attestation by the property owner of the owner's
28 total annual gross income;
- 29 (2) Mortgage Holder Consent or Escrow: verify that each prior mortgage or
30 financing instrument holder has consented to any proposed Financing
31 Agreement and PACE Assessment, or that the prior mortgage or financing
32 instrument holder or loan servicer has consented to escrow sufficient funds to

1 ensure payment of the annual assessment with each year's tax bill; or
2 (3) Insurance or Energy Savings: verify that the total cost of the Financing
3 Agreement or PACE Assessment is equal to or less than the projected savings
4 to the property owner based upon the projected energy savings in a written
5 statement from a Certified Energy Auditor, certified by the Association of
6 Energy Engineers, the Residential Energy Services Network, or the Building
7 Performance Institute, or the projected insurance savings in a written statement
8 from the property owner's insurer.

9 (ii) For property owners whose annual income is equal to or less than one hundred
10 twenty percent (120%) of the average median income for Palm Beach County, as
11 most recently published by HUD in the HUD Income Limits Summary, financing
12 limitations to ensure that the total amount of any annual property taxes and
13 assessments does not exceed five percent (5%) of the property's Fair Market Value,
14 determined at the time financing is approved, and ensure that the total amount of
15 annual PACE assessments does not exceed four percent (4%) of the total annual
16 gross income of the property owner in the prior calendar or fiscal year, based upon
17 an affidavit or attestation by the property owner of the owner's total annual gross
18 income.

19 (3) Non-Residential Properties. PACE Agencies/Authorities/Districts and Third-Party
20 Administrators may finance Qualifying Improvements on Non-Residential Properties
21 provided they comply with the following criteria inclusive of all eligibility criteria listed in
22 the PACE Statute and all future amendments thereto, along with additional consumer
23 protections.

24 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
25 otherwise secured by the property, the total amount of any non-ad valorem assessment
26 for a property under the PACE Statute may not exceed twenty percent (20%) of the just
27 value of the property as determined by the county property appraiser, excepted as
28 otherwise provided by statute; and

29 (b) All property taxes and other assessments levied on the property tax bill have been paid
30 and have not been delinquent for the preceding three years, or the property owner's
31 period of ownership, whichever is less; and

- 1 (c) There are no involuntary liens, including but not limited to construction liens on the
2 property; and
- 3 (d) No notices of default or other evidence of property-based debt delinquency have been
4 recorded during the preceding three years, or the property owner's period of ownership,
5 whichever is less; and,
- 6 (e) All mortgage debt on the property is current and not delinquent.
- 7 (4) Qualifying Improvements. The PACE Agency/Authority/District will finance energy
8 efficiency, renewable energy and wind resistant improvements that are permanently affixed
9 to the property as more specifically described in the PACE Statute. All improvements and
10 products should identify efficiency standards established by the U.S. Department of
11 Energy, the U.S. Environmental Protection Agency, or Florida state agencies as applicable.
12 All Qualifying Improvements must comply with the PACE Statute for energy efficiency,
13 renewable energy, and wind resistance or other improvements as permissible by law.
14 PACE Agencies/Authorities/Districts and Third-Party Administrators shall establish
15 procedures confirming that the property owner applying for financing through the PACE
16 Agency/Authority/District or Third-Party Administrators intends to install Qualifying
17 Improvements, and that at the time of funding such improvements have been installed.
- 18 (5) Inquiries and Complaints.
- 19 (a) The PACE Agency/Authority/District shall be required to receive, manage, track,
20 timely resolve, and report on complaints from property owners regarding the funded
21 work performed by the contractors. The PACE Agency/Authority/District shall
22 investigate and mediate disputes between property owners and contractors in a timely
23 manner.
- 24 (b) Payment inquiries. The PACE Agency/Authority/District shall be required to respond
25 to inquiries and resolve any issues in a timely manner, related to payments, including
26 but not limited to prepayments and payment reconciliation.
- 27 (c) Review. In the event that ten percent or more of a PACE agency's/authority's/district's
28 projects result in complaints or disputes, or such complaints or disputes remain
29 unresolved six months after completion of a project, the County may review the PACE
30 agency's/authority's/district's handling of complaints and may request corrective
31 actions or initiate suspension proceedings pursuant to Section 7.
- 32 (6) Data Security. The PACE Agency/Authority/District and Third-Party Administrator are

1 responsible for taking security measures that protect the security and confidentiality of
2 consumer records and information in proportion to the sensitivity of the information, and
3 as required by state and federal law.

4 (7) Consumer Privacy. The PACE Agency/Authority/District and Third-Party Administrator
5 must develop and maintain a privacy policy that complies with local, state, and federal law
6 and, in particular, shall provide a property owner the ability to opt-out of having the
7 property owner's information shared with third parties, except where expressly permitted
8 by local, state, and federal law.

9 (8) Marketing and Communications. Marketing practices for a PACE
10 Agency/Authority/District or Third-Party Administrator that are or could appear to be
11 unfair, deceptive, abusive, or misleading, or that violate applicable laws or regulations, that
12 are inappropriate, incomplete or are inconsistent with the PACE
13 Agency's/Authority's/District or Third-Party Administrator's purpose are prohibited,
14 including, but not limited to, any statement that PACE financing is a free form of public
15 assistance, that PACE financing is a Palm Beach County government program, that PACE
16 financing will be repaid by the subsequent owner of the qualifying residential property,
17 that the improvements will pay for themselves, or that the property owner will receive tax
18 benefits from the program.

19 (9) Protected Classes. The PACE Agency/Authority/District and Third-Party Administrator
20 shall not discriminate against individuals on the basis of race, color, ancestry, disability,
21 national origin, religion, age, familial status, marital status, sex, gender, sexual orientation,
22 gender identity and expression, or genetic information.

23 (10) Contractor Management.

24 (a) Before financing a Qualifying Improvement, a PACE Agency/Authority/District or
25 Third-Party Administrator make a reasonable effort to investigate contractors selected
26 to install a Qualifying Improvement for the following:

27 (i) Status of all State and local licenses, registrations and/or certifications;

28 (ii) Relevant work or project history;

29 (iii) Financial and reputational background checks;

30 (iv) Criminal background check; and

31 (v) Status on Better Business Bureau or other online platforms that track contractor
32 reviews.

- 1 (b) A PACE Agency/Authority/District or Third-Party Administrator must memorialize
2 their reasonable efforts to investigate selected contractors in contractor investigation
3 reports. Contractor investigation reports must be maintained and made available for
4 review by property owners and the County, as permitted by law. A PACE
5 Agency/Authority/District or Third-Party Administrator may not finance Qualifying
6 Improvements that are installed by contractors that PACE Agency/Authority/Districts
7 or Third-Party Administrators know, or should know, are not properly licensed,
8 registered, certified, or otherwise legally authorized to perform such work.
- 9 (c) A PACE Agency/Authority/District must obtain the contractor's written agreement that
10 the contractor shall comply with each of the following conditions:
- 11 (i) Be licensed and insured pursuant to the applicable state and local requirements;
12 (ii) Agree to comply with all program requirements and marketing guidelines;
13 (iii) Act in good faith to timely resolve property owner complaints; and
14 (iv) Agree to not present a higher price for a qualifying improvement on residential real
15 property financed by a PACE financing agreement than the contractor would otherwise
16 reasonably present if the qualifying improvement were not being financed through a PACE
17 financing agreement.
- 18 (d) PACE Programs shall have and shall strictly enforce anti-kickback policies and
19 procedures that prohibit direct financial or other monetary incentives to contractors in
20 exchange for or related to such contractor being awarded work under a PACE Program,
21 excepting payment for the contractor's installation of Qualifying Improvements.
- 22 (11) Financing. The PACE Agency/Authority/District will establish pricing rules and
23 enforcement mechanisms to ensure property owners are protected from excessive or
24 unjustified prices and charges. In addition, the PACE Agency/Authority/District shall
25 require compliance with each of the following conditions prior to the issuance of any final
26 disbursement to the contractor:
- 27 (a) Contractors have certified that any necessary permits have been obtained;
28 (b) Verification that the Qualifying Improvements have been installed;
29 (c) The property owner and the contractor have signed a final inspection and/or certificate
30 of completion that all improvements have been installed to the property owner's
31 satisfaction.
- 32 (12) Reporting. Each PACE Agency/Authority/District and Third-Party Administrator shall

1 provide a report to the County on a quarterly calendar basis, due 30 days following the
2 close of the quarter. Each PACE Agency/Authority/District and Third-Party Administrator
3 shall utilize the County-supplied spreadsheet for the report. This spreadsheet shall not be
4 modified, though additional information may be supplied in a separate spreadsheet. The
5 quarterly reports shall include, at a minimum, the following information:

- 6 (a) Dates of the reporting period;
- 7 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel
8 control numbers, financed amount, annual estimated payments, interest rate,
9 assessment duration, and project description) started during the reporting period,
10 separated by building type (e.g., single family, multifamily, retail, office, industrial,
11 etc.);
- 12 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel
13 control numbers) completed during the reporting period, separated by building type
14 project (e.g., single family, multifamily, retail, office, industrial, etc.). For each project,
15 specify:
 - 16 (i) the qualifying improvements made;
 - 17 (ii) project start date and completion date;
 - 18 (iii) total amount financed, including percent (%) of financing spent on each
19 improvement, if multiple;
 - 20 (iv) annual estimated payments;
 - 21 (v) the projected energy savings and/or amount of potential renewable energy to be
22 generated;
 - 23 (vi) financial information such as cost per kilowatt hour saved/generated;
 - 24 (vii) other resource savings if data is available; and
 - 25 (viii) audits performed detailing the audit results, if applicable to the project;
- 26 (d) Number of actual or estimated jobs created during the reporting period, including local
27 versus non-local jobs and permanent versus temporary jobs;
- 28 (e) Number of applications declined during the reporting period;
- 29 (f) Resolved and unresolved complaints and/or contractor issues and status, including
30 category of each complaint and/ or issue, when the complaint/issue was filed, and when
31 the complaint/issue was resolved; and
- 32 (g) Assumptions and methodologies used for energy savings, renewable energy, cost per

1 kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
2 under this subsection, including third-party sources, standard equations, and calculation
3 factors. Describe any changes in the methodologies and assumptions from the previous
4 reporting period. PACE Agencies/Authorities/Districts and Third-Party Administrators
5 shall work together to standardize their assumptions and methodologies so that
6 reporting is consistent. The County reserves the right to provide standard assumption
7 and methodology sources for these calculations that the PACE
8 Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
9 of receipt.

10 (h) Fair Market Value of property and method for determining Fair Market Value.

11 (13) *Data and Document Requests.* Each PACE Agency/Authority/District and Third Party
12 Administrator must comply with reasonable requests for additional data or documents from
13 the County and provide such data within 60 days of the request, consistent with federal and
14 state law.

15 (14) *Incomplete Data or Late Reporting.* In the event any PACE Agency/Authority/District
16 or Third Party Administrator fails to provide complete data or provide reports by the stated
17 due dates, they will be given 60 days to cure the defect, after which written notice will be
18 given prior to any administrative act to suspend. The suspension will take place 30 days
19 after this notice is given. After such defect, any new project starts from the PACE
20 Agency/Authority/District or Third-Party Administrator of which the reports are
21 incomplete will be suspended until the complete data is provided. The right to cure is an
22 option before suspension or termination will occur. Suspension will be done by the County
23 Administrator or designee.

24 (15) *Suspension or Termination of PACE Agency/Authority/District.* In the event any PACE
25 Agency/Authority/District fails to incorporate and continually provide for all of the
26 foregoing service components or to otherwise abide by the provisions of this Ordinance
27 and/or the interlocal agreement the County, in its sole discretion, may suspend or terminate
28 the interlocal agreement and support of the County at any time upon written notice to that
29 PACE Agency/Authority/District. Suspension or termination will be done by the County
30 Administrator or designee. Any project that has been initiated or received PACE financing
31 as of the time of suspension or termination shall be permitted to be completed, and continue
32 until such time that all outstanding debt has been satisfied.

1 (16) Administrative Fees. PACE Agencies/Authorities/Districts and Third-Party
2 Administrators will be responsible for paying administrative fees to the County on an
3 annual basis. The Board will establish fees for administrative tasks carried out by County
4 staff, including interlocal agreements, indemnification agreement for new PACE
5 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects
6 funded during the year, and Non-Residential projects funded during the year. PACE
7 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual
8 summary of all projects completed within that year and provide a payment per project to
9 the County.

10 **Section 5. REPEAL OF LAWS IN CONFLICT:**

11 All local laws and ordinances in conflict with any provisions of this Ordinance are
12 hereby repealed to the extent of such conflict.

13 **Section 6. SAVINGS CLAUSE:**

14 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all
15 administrative and court orders, fines, and pending enforcement issued pursuant to this
16 authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County
17 Code shall remain in full force and effect.

18 **Section 7. SEVERABILITY:**

19 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
20 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
21 such holding shall not affect the remainder of this Ordinance.

22 **Section 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

23 The provisions of this Ordinance shall become and be made a part of the Palm Beach
24 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
25 such, and the word Ordinance may be changed to section, article, or other appropriate word.

26 **Section 9. ENFORCEMENT:**

27 This Ordinance is enforceable by all means provided by law. Additionally, the County
28 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
29 Beach County.

30 **Section 10. PENALTY:**

31 Any violation of any portion of this Ordinance shall be punishable as provided by law.

1 **Section 11. CAPTIONS:**

2 The captions, section headings and section designations used in this Ordinance are for
3 convenience only and shall have no effect on the interpretation of the provisions of this
4 Ordinance.

5 **Section 12. EFFECTIVE DATE:**

6 The provisions of this Ordinance shall become effective upon filing with the
7 Department of State.

8 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
9 Beach County, Florida, on this the ____ day of _____, 20____.

10
11

12 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

13
14
15
16

17 **By:** _____
18 **Deputy Clerk**

By: _____
Robert Weinroth, Mayor

19

20 **APPROVED AS TO FORM AND**
21 **LEGAL SUFFICIENCY**

22
23
24

25 **By:** _____
26 **County Attorney**

27

28 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
29 _____, 20____.

Attach 3

Summary



Office of Resilience

2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
(561) 233-2400
FAX: (561) 233-2414
www.pbcgov.com/resilience



**Palm Beach County
Board of County
Commissioners**

Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

Official Electronic Letterhead

TO: Robert Weinroth, Mayor, and Members of the Board of County Commissioners
FROM: Megan Houston, Director, Office of Resilience
DATE: May 19, 2022
SUBJECT: Property Assessed Clean Energy Program (PACE) Proposed Ordinance Amendments Summary

I. Background

In recent years, Office of Resilience (OOR) staff has presented to the Board of County Commissioners (BCC) at several workshops and received BCC direction on the Palm Beach County Property Assessed Clean Energy (PACE) Program that operates in the County. On September 29, 2021, OOR and other stakeholders presented at a BCC workshop on potential ordinance and streamlining improvements to the County PACE Program. The BCC directed staff to work with stakeholders and recommend amendments to the Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017012), section 17-504 through section 17-507, regarding the PACE Program. The BCC directed staff to separate out Residential and Non-Residential requirements, streamline reporting processes, increase consumer protections, and assess if interest rate caps are feasible.

Staff has met with local PACE representatives numerous times to collaborate on these efforts. Additionally, staff has worked closely with the Tax Collector's Office (TCO) on these recommendations. Staff has summarized below areas of consensus, disagreement, and areas needing further input. OOR staff will be presenting proposed Ordinance amendments to the BCC at the June 7, 2022, BCC meeting.

II. Areas of Majority Agreement

The PBC OOR has worked diligently with the PACE Industry and the PBC TCO to reach agreement on many Ordinance amendment suggestions. These include:

- Requiring the PACE industry to comply with reasonable requests for data within 60 days when adding new providers.
- Requiring the PACE industry to use a PBC-supplied template for quarterly reporting due within 30 days of the close of the quarter.
- Separating Residential and Non-Residential for disclosure requirements and eligible property and program requirements.
- Adding that improvement useful life is determined by reputable third-party sources.
- Requiring disclosure of assumptions for energy savings, renewable energy, and other similar calculations.
- For Residential PACE projects, requiring disclosure of County programs that could help residents fund home improvements.
- For Non-Residential PACE projects, allowing for a prepayment penalty.
- Non-Residential PACE projects under \$250,000 must provide a Non-Residential Consumer Disclosure Notice (CDN) to property owners. Non-Residential PACE projects \$250,000 and greater do not have to provide separate disclosure.
- For incomplete or missing data, providing 60 days to cure, notice, and 30 days until suspension.



III. Areas of Disagreement - OOR Ordinance Suggestions

PBC staff provided Ordinance amendment suggestions based on BCC direction and industry best practices with which not all PACE stakeholders agree. These include:

- Providing a Fair Market Value definition for certain consumer protection provisions.
 - The TCO recommends using the Just Market Value or 115% of the Just Market Value
 - Some PACE providers recommend using a method determined by industry-recognized and approved sources or determined by reputable third parties.
- Requiring Residential projects to meet additional underwriting including ability to pay requirements.
- Requiring the 3-day right to cancel with the PACE provider to occur before the contractor can begin work.
- Adding additional contractor management provisions.
- Requiring the PACE industry to use a PBC-supplied template for CDN, offer property owners a hardcopy of the CDN within the 3-day right to cancel, and provide the CDN to OOR and TCO in electronic format within 5 business days of execution.
- Prohibiting PACE Agencies/Authorities/Districts and PACE Third-Party Administrators from disclosing the maximum financing amount a property owner is eligible for to a PACE contractor, except as required by law.
- Requiring administrative fees commensurate with PBC staff time to administer and enforce the PACE ordinance.
- Requiring a disclosure that pursuant to Section 197.3632, Florida Statutes, PACE Agencies/Authorities/Districts are responsible for submitting all PACE assessments to the TCO free of errors and omissions. If the TCO discovers errors or omissions, it may request the PACE Agency/Authority/Agency to file a corrected tax roll or a correction of the amount of any PACE assessment.

IV. BCC Direction Needed

Staff will be asking the BCC for further direction on whether staff should include or revise the following in the Ordinance amendments.

- Whether to allow variable interest rate financing terms.
- For Residential PACE projects
 - Whether to cap interest rates beyond what is set by usury laws.
 - Whether to require that property owners must not currently be or have been in bankruptcy within the past 3 years.
- For Non-Residential PACE projects, whether to eliminate the 3-day right to cancel requirement.